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of his right, title and interest in the property allotted to such other. One of the grandchildren, in contemplation of marriage, conveyed the property so received by him to his intended wife and then married her, and shortly thereafter died without issue, or possibility of issue.

Held: The title of survivorship of the two surviving grandchildren passed by their deed to their deceased brother in his lifetime, and by his deed is vested in his widow.

DAY V. NATIONAL MUTUAL BUILDING & LOAN ASSOCIATION AND OTHERS.—Decided at Richmond, December 1, 1898.—*Keith, P. Absent, Riely and Cardwell, JJ:*

1. BUILDING ASSOCIATION—*Principal and agent—Statements of agent.* A building fund association is not bound by the statement of a local agent as to the amount of the balance due on a loan in his locality, where it appears that his agency was limited to the duty of receiving and receipting for premiums and dues payable to the association by its members in that locality.

2. PRINCIPAL AND AGENT—*Unauthorized agent—Ratification.* If a principal adopts the act of an unauthorized agent, or if, with knowledge of the facts, he accepts the benefit of such act he will be estopped to deny the agent's authority. But ratification rests upon and implies knowledge of the principal.

3. PRINCIPAL AND AGENT—*Unauthorized statements by agent—Enforcement of lien—Personal decree.* A principal who holds a lien on real estate which has been purchased by one who has assumed the payment of the lien is not bound by the undisclosed statements of an agent acting beyond the scope of his agency made to such purchaser, before his purchase, as to the amount of the balance due on the lien, and in a suit by the purchaser against the principal to enjoin the enforcement of the lien a prayer in the answer of the principal for a personal decree against the purchaser for any balance that may remain after exhausting the real estate, does not operate by estoppel or otherwise to prevent the principal from denying the agency.

HITE V. COMMONWEALTH.—Decided at Richmond, December 1, 1898.—*Buchanan, J. Absent, Riely, J:*

1. CONTINUANCE—*Discretion.* A motion for a continuance is addressed to the sound discretion of the trial court, under all the circumstances of the case, and, though its action is subject to review by the appellate court, it will not be reversed unless plainly erroneous.

2. CONFESSIONS—*When may be given in evidence.* A confession may be given in evidence if it was not obtained by some inducement of a worldly or temporal character in the nature of a threat or promise of benefit held out to the accused in respect to his escape from the consequences of his offence, or the mitigation of the punishment, by a person in authority, or with the apparent sanction of such a person.

3. MURDER—*Provocation—Malice—Presumption—Burden of proof.* Where a wound resulting in death was inflicted by a prisoner, with a deadly weapon previously in his possession, without any or upon very slight provocation, the *prima*

facie presumption is that the killing was wilful, deliberate and premeditated, and the burden of proving extenuating circumstances is cast upon the prisoner.

4. APPEAL AND ERROR—*Exceptions must point out errors.* This court will not consider an exception to the action of a trial court in giving instructions of its own in lieu of those offered by a party, unless the exception points out the error in the action of the trial court.

5. JURORS — *Objection to competency after verdict—Waiver.* An objection to a juror because he is under the age of twenty-one years comes too late after verdict. The objection, though good if raised in time, must be deemed to have been waived.

6. HOMICIDE—*Drunkenness as an excuse for crime.* If an accused was not so much under the influence of liquor at the time of the commission of an offence as not to know what he was doing, or not to know right from wrong, it is immaterial that he has been accustomed to drink heavily for years, and was drinking at that time.

ROGERS AND OTHERS V. PATTIE, TRUSTEE.—Decided at Richmond, December 1, 1898.—*Buchanan, J.* Absent, *Riely* and *Cardwell, JJ.*

1. MUTUAL MISTAKE—*Relief in equity—Executory and executed contracts.* A mutual mistake of parties in an executory contract in a matter which is part of the essence of the contract and of the substance of the thing contracted for will be relieved against in a court of equity, and may be good ground for rescinding the contract, or of specifically executing it upon equitable terms of compensation according to circumstances. But where the contract has been executed and rescission is asked on the ground of mutual mistake, the mistake must be plain and palpable, and must affect the very substance of the thing contracted for, and not merely a material part of such substance. The loss of a part of a lot of land bought for speculation, and which has been conveyed to the purchaser is ground for compensation at his instance, but not for rescission.

2. MUTUAL MISTAKE—*Remedies at law and in equity.* A vendee of real estate may go into a court of equity on the ground of mutual mistake and recover compensation for land lost, notwithstanding he has the right to proceed at law on his covenants for title.

ROANOKE STREET RAILWAY CO. AND OTHERS V. HICKS, TRUSTEE, AND OTHERS.—Decided at Richmond, December 1, 1898.—*Harrison, J.* Absent, *Riely, J.*

1. CHANCERY PLEADING—*Discovery—Corporations—Who must be parties—Complete relief.* If a party is properly before a court of equity for a discovery, the court having possession of the subject will proceed to decide the case, unless the discovery is sought and obtained to be used in a court of law. But some one must be made a defendant who can answer under oath. A corporation answers under its corporate seal, and if it is the sole defendant to a bill for discovery only the bill will be dismissed. The usual and proper method is to make some officer of the corporation who knows the facts sought to be elicited a co-defendant with the corporation.

2. CHANCERY PRACTICE—*Specific performance—Impossibility of performance.* A